

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PENNSYLVANIA COACH LINES, INC.

Civil Action

Plaintiff,

No. 20-1139

v.

Judge Robert J. Colville

STUDENT TRANSPORTATION OF
AMERICA, LLC.

Defendant.

**PLAINTIFF’S BRIEF IN SUPPORT OF MOTION FOR CONTEMPT SANCTIONS
AND TO COMPEL COMPLIANCE**

Pursuant to Federal Rule of Civil Procedure 45(g), Plaintiff Pennsylvania Coach Lines, Inc. (“PA Coach”), by and through its attorney, Eckert Seamans Cherin & Mellott, submits the following Brief in Support of its Motion for Contempt Sanctions and to Compel Compliance.

I. Subpoena History

On November 14, 2020, Plaintiff served a Subpoena To Testify at a Deposition in a Civil Action (the “Subpoena”) on Mr. Clifton Miller, requiring him to attend a deposition on December 1 2020, at 1:30 P.M. and to produce certain documents at that time. *See Exhibit A.* The Subpoena attached a copy of Federal Rule of Civil Procedure 45(g), explaining to Mr. Miller that he would be in contempt of Court if he failed to comply with the Subpoena. Plaintiff, through its counsel, also sent a cover letter to Mr. Miller attaching the Subpoena and informing Mr. Miler again of the date, time, and place of the deposition and asking him to reach out to counsel if he had questions. *Exhibit A.* The Subpoena was properly served on Mr. Miller and the process server completed the Proof of Service. *Exhibit A.*

II. Mr. Miller's Failure to Comply with Subpoena

Mr. Miller's deposition was scheduled for December 1, 2020, at 1:30 P.M. Plaintiff's counsel emailed Mr. Miller on November 16. Plaintiff's counsel then called Mr. Miller on November 19 and received no answer. Plaintiff's counsel then left a voicemail message on Mr. Miller's phone. After still hearing no response, Plaintiff's counsel sent another email to Mr. Miller on November 23, which also went unanswered. The messages relayed to Mr. Miller that the deposition would be conducted remotely instead of in-person. Mr. Miller did not respond to these messages and ultimately never showed up to the deposition scheduled to take place on December 1 and never produced any documents, despite the fact that he was properly served with the Subpoena. So far as the undersigned is aware, Mr. Miller is not represented by Defendant's counsel or any other legal counsel.

III. Legal Argument

Rule 45(g) permits a court to "hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena." Fed. R. Civ. 45(g). Civil contempt sanctions serve the purpose of coercing a person into complying with the court's order and "compensat[ing] for losses sustained by disobedience." *Tracfone Wireless, Inc. v. LaMarsh*, 307 F.R.D. 173, 175 (W.D. Pa. 2015) (quoting *Int'l Plastics & Equip. Corp. v. Taylor's Indus. Servs.*, No. 07-1053, 2011 WL 1399081, at *4 (W.D. Pa. Apr. 12, 2011)). It is well-settled that a court may impose fines as a punishment for civil contempt. *Tracfone*, 307 F.R.D. at 175. In addition to fines, courts in the Third Circuit have imposed costs and fees against persons who failed to appear at a deposition in violation of a subpoena. *Jones v. Thomas Jefferson Univ. Hosps., Inc.*, No. 13-4316, 2015 WL 1255997, at *7-8 (E.D. Pa. Mar. 19, 2015); *Gen. Ins. Co. of Am. v. E. Consol. Util., Inc.*, 126 F.3d 215, 220 (3d Cir. 1997). The costs and fees awarded to the

aggrieved party include the amounts the party incurred as a result of the person's failure to attend the deposition. *Jones*, 2015 WL 1255997 at *7-8.

Here, Mr. Miller was properly served with a subpoena to attend a deposition and produce documents on December 1, 2020. Plaintiff's counsel contacted Mr. Miller numerous times in the days leading up to December 1, 2020, and its attempts went ignored. Mr. Miller ultimately never attended the scheduled deposition or produced documents, in violation of the Subpoena. Under Federal Rule of Civil Procedure 45(g), this Court has the authority to find Mr. Miller in civil contempt for failing to abide by a subpoena order. Fed. R. Civ. 45(g). The Court may also impose on Mr. Miller contempt sanctions such as fines and the costs and fees associated with the noncompliance and Plaintiff's efforts to compel compliance. *Jones*, 2015 WL 1255997 at *7-8.

Mr. Miller's noncompliance with the subpoena—especially in light of the other drivers' noncompliance with their respective subpoenas—has prejudiced Plaintiff's ability to conduct discovery and support its arguments in this action.

IV. Conclusion

For the reasons set forth herein, Plaintiff respectfully requests that this Court find Mr. Miller in contempt for failure to obey a subpoena and impose contempt sanctions upon Mr. Miller in the form of a fine and Plaintiff's costs and fees incurred by Plaintiff as a result of Mr. Miller's noncompliance. Additionally, Plaintiff respectfully requests that this Court compel Mr. Miller to comply with the subpoena order and attend a deposition in the above-captioned matter at a time and date to be determined.

Dated: January 12, 2021

Respectfully submitted,

/s/ Ray F. Middleman

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*Counsel for Plaintiff, Pennsylvania Coach
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CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2021 the foregoing Brief in Support of Motion for Contempt Sanctions and to Compel Compliance was filed electronically with the Clerk of the Court using the ECF system, which will send notification of such filing electronically, to the following:

Maria Greco Danaher, Esq.
April Cressler, Esq.
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One PPG Place
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I hereby certify that on January 12, 2021 the foregoing Brief in Support of Motion for Contempt Sanctions and to Compel Compliance was sent via U.S. Mail to the following:

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/s/ Ray F. Middleman